

The proposed and existing regulations at 47 CFR 64.1200 and 47 USC 227 leave some unintended glaring loopholes permitting abuses I believe were not intended by Congress.

First, the restrictions on delivery of calls between 8am and 9pm applies only to telephone solicitations. However, allowing ANY UNSOLICITED calls to be made outside of these hours, including those from tax-exempt non-profit organizations, pollsters, or political campaigns is not prudent. Due to the tighter controls on telemarketers, it allows non-profits in effect to "license" their name for use by telemarketers. One simply has to provide some, albeit minimal contribution to the charity to exempt the telemarketer from most restrictions, since the call is now originating on behalf of the non-profit. Similarly, pollsters, who profit from their calls, can make calls day or night. I recently received a call from one of the major polling firms at 9:25pm. An even more serious abuse could take place by simply having a political campaign or non profit make calls in the early a.m. hours purporting to support a candidate, but with the real intention of annoying voters and encouraging them to vote against the named candidate. The fact that the call may not be authorized by the candidate would not make much difference. In short, failure to restrict hours of UNSOLICITED calls makes it possible for anyone who is not selling a product or service to use the regulations as a defense against harassment of those called.

Further, there is a particular category of non-profit organizations: debt management organizations, many of which tend to function similarly to for profit companies. These non-profits do not solicit contributions because their fees are paid by creditors as required by law, however, they solicit clients in order to increase their fees from creditors. While the organization is non-profit, compensation of directors can be significant.

I believe the regulations should be modified as follows:

1. ALL UNSOLICITED CALLS (ie where the consumer has not requested the call and has no business relationship) should be subject to the following:

- calls are only permitted between 8am and 9pm.
- The caller must follow all of the regulations for maintaining a "company" (actually organization) specific DO NOT CALL LIST that telemarketers are subject to.
- The call must provide Caller ID identification and follow the related regulations to the same extent as telemarketing calls.
- For the purposes of this section, an unsolicited call from a political party or campaign is one where the called party has not requested contact by phone. I.e., general announcements to a list. The founding fathers did not envision a right to free speech to include the right to burst into one's home or bedroom in the middle of the night to deliver a message. Failure to restrict the time of such calls is the modern equivalent. Further, no valid purpose is gained by allowing political parties or campaigns to hide their identity, and it is easily argued that allowing such cloaking could allow the types of abuses referenced above. Free speech also does not imply the right to invade one's home/privacy to deliver a message that the recipient has already

deemed not of interest.

A "business relationship" should not be assumed merely by one's membership in a party or by registering to vote.

2. With regard to exemptions for non-profit organizations, these exemptions should be limited to calls where:

- if only contributions are solicited, at least 75% of the funds collected must remain with the organization,
- if a product or service is provided in exchange for a contribution or fee, the value of the product or service (per IRS Regulations) must not exceed 25% of the contribution or fee.

All other calls from non-profits should not be exempt.

3. Polling and survey calls should be subject to the same rules as telemarketers. These are for profit companies. They generally do not disclose their client and may not even have a client if the work is speculative. They are not initiating speech, and therefore no free speech right should be assumed. Particularly with respect to commercial market research, the courts have determined that different speech is treated differently when balancing rights, in that political speech requires more freedom than commercial speech or content of a pornographic nature. If the intent of a poll is to actually influence opinion rather than sample it (ie. a "push poll"), then this should be considered the same as a political party, with the exemptions limited as in 1 above. However, in order to qualify, it should be made clear in the initial 30 seconds, that the "survey" is or contains a political message, and the party or organization qualifying must be identified. Free speech does not include the right to deceive.

4. Where permitted, the preamble of prerecorded or artificial voice announcements should require the phone number, instead of allowing the phone number to be played at the end of the message. The current rule requires a consumer to listen to the entire message which could be quite lengthy in order to request that they not be called again, or for identification purposes for enforcement.